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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

13340 MDR LLC, Cross-complainant and Appellant, v. PREFERRED BANK, Cross-defendant and Respondent.	B286008 (Los Angeles County Super. Ct. No. SC116038)

APPEAL from a judgment of the Superior Court of Los Angeles County, Nancy L. Newman, Judge. Affirmed.

Law Office of David W. Martin and David W. Martin for Cross-complainant and Appellant.

Frandzel Robins Bloom & Csato, Thomas M. Robins III and Hal D. Goldflam for Cross-defendant and Respondent.

A real estate developer obtained a construction loan for a condominium project. When the project failed, the bank and the developer resolved their differences by means of a deed in lieu of foreclosure, which contained a release of the developer's claims against the bank. The developer subsequently sued the bank for multiple causes of action arising out of its funding of the condominium project. The bank obtained summary judgment based on the release. The developer appeals, arguing that it raised a triable issue of fact that the release is unenforceable due to fraud, lack of consideration, duress, or equitable estoppel. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Transaction*

The case involves a dispute between Preferred Bank (Bank), on one hand, and Areg (sometimes called Eric) Baghdassarians, on the other. Baghdassarians is a sophisticated businessman with over 18 years of experience in the construction industry. Prior to the transaction at issue in this case, he had been the developer of multiple projects which had been financed by Bank. Baghdassarians' participation in this transaction was largely through two entities in which he is a principal: Angeleno Builders and 13340 MDR, LLC (MDR). MDR was created purely for this construction project; its name relates to the street address of the planned condominiums in Marina del Rey.

Because this appeal concerns only the enforceability of the release, not the underlying transaction itself, we provide an abbreviated view of the complex transaction, simplifying the facts where we can. Many of the facts are disputed. For the purposes of our discussion here, we rely on the text of the governing documents, and the parties' positions as set forth in their

respective separate statements of undisputed facts. This discussion is to provide context to the only legal issue presented by this appeal—the enforceability of the release.

The project was funded by two loans to MDR: (1) a $16.5 million construction loan, secured by a senior deed of trust on the property; and (2) a $2.1 million loan, secured by a junior deed of trust on the property. Robert Havai, a friend of Baghdassarians and a member of MDR, guaranteed MDR's obligation under the senior loan.

The documents were dated March 27, 2009. They provided for interest payments to begin in April 2009. According to the governing construction loan agreement, the project would be completed by September 1, 2010, and the senior loan would be due on October 5, 2010; however, the loan could be extended to April 5, 2011. In other words, it was agreed that the project would be completed before the loan came due, and this would occur no later than April 5, 2011. Once the senior note was paid off from the proceeds of the project, certain set payments would be made to MDR and Bank, and the balance of the profits would be split 60 percent to MDR and 40 percent to Bank. This profit-sharing arrangement creates what is known as a "shared appreciation loan." (Civ. Code, § 1917.)[1] By statute, the additional percentage is considered " '[c]ontingent deferred interest' " (§ 1917, subd. (a)) and is exempt from usury laws (§ 1917.005). Pursuant to section 1917.001, "[t]he relationship of the borrower and the lender in a shared appreciation loan transaction is that of debtor and creditor and shall not be, or be

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[1] All undesignated statutory reference are to the Civil Code unless otherwise specified.

construed to be, a joint venture, equity venture, partnership, or other relationship." Nonetheless, as we shall discuss, MDR takes the position that MDR and the Bank were engaged in a joint venture with respect to the project.

There is a third related loan. In December 2009, Angeleno Builders took out a $585,000 line of credit (the Angeleno line of credit) accompanied by a personal guarantee from Baghdassarians, secured by a deed of trust on Baghdassarians's house.[2] The circumstances surrounding this line of credit are disputed. According to Bank, it had been required to place the senior loan on non-accrual status because MDR's initial cash down payment was not sufficient under accounting standards. Once the Angeleno line of credit was established, MDR used $302,500 of that line of credit to pay down the senior loan sufficiently to return it to accrual status. In consideration for this additional capital contribution, Bank increased MDR's share of the final profits from the transaction from 60 percent to 65 percent. While MDR does not dispute the language of the line of credit, the guarantee, the deed of trust, or its increase in the anticipated profits, it does dispute the reason for the documents and their enforceability. According to MDR, "[t]he reason the Bank asked for 'additional security' was to placate banking regulators. No money changed-hands and the transaction was a self-serving fiction for the benefit of the Bank." MDR argued, "[t]he Bank simply told Baghdassarians that he needed to sign the document so that they could continue to fund. No payments

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[2] The guarantee of the Angeleno line of credit (by Baghdassarians) was distinct from the guarantee on the senior loan, which was by Robert Havai.

would be required." The line of credit was to mature in January 2012—long after the project was expected to be completed.

2. *The Project Fails*

In late 2010, the parties amended the construction loan agreement, extending the maturity dates of the notes to September 5, 2011, and providing an increase in the face amount of the junior note by nearly $500,000.[3]

By August 18, 2011, four months after the original expected completion date, the project was still not finished. The Bank wrote MDR and guarantor Havai reminding them that the loans in connection with the project would mature on September 5, 2011, and it did not appear that construction would be completed on time. The Bank indicated that it would consider an additional extension, if certain terms were met.

MDR never completed construction. The Bank took the position that the failure to complete construction within the extended maturity date constituted a breach; MDR believed that the maturity dates were irrelevant and the Bank inappropriately stopped funding the loan, causing construction to halt.

3. *The Deed in Lieu of Foreclosure and Release*

The Bank found a buyer for the project, an entity known as Anastasi. Bank sold its interest in the loans to Anastasi. At the same time, MDR gave Anastasi, as Bank's assignee, a deed in lieu of foreclosure. The deed in lieu was accompanied by a deed in lieu agreement. The deed in lieu extinguished MDR's

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[3] MDR disputes the date that this amendment was signed, arguing that the bank fraudulently back-dated it, but does not dispute the amendment itself.

obligations on both loans; Anastasi also released Havai from his guaranty.[4]

The deed in lieu agreement contained a general release, whereby MDR and Havai released Anastasi and Bank (among others) "from any and all lawsuits, debts, losses, claims, liens, liabilities, demands, obligations, promises, acts, agreements, costs, expenses, damages, actions and causes of action, of whatever kind or nature, whether known or unknown, suspected or unsuspected, contingent or fixed, that the Releasor Parties have or may have against the Released Parties, including, but not limited to any of the foregoing that concern, relate or pertain to, in any way whatsoever, the Loans, the Loan Documents (including, without limitation, the Guaranty), and/or the Property." A waiver of Civil Code section 1542 was also included.[5] Additionally, the release provided "In entering into the release provided for in this Agreement[,] Borrower and Guarantor, and each of them, recognize that no facts or representations are ever absolutely certain; accordingly, Borrower and Guarantor, and each of them, assume the risk of any misrepresentation, concealment, or mistake, and if, except as reserved above, Borrower or Guarantor, or any of them, should subsequently discover that any fact that they relied upon in

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[4] The Angeleno line of credit, which had been used to partially pay down the MDR project and partially pay down another Baghdassarians's project, was not directly addressed in the sale of the senior and junior MDR loans to Anastasi.

[5] Civil Code section 1542 provides that a general release does not extend to claims the releasing party does not know or suspect to exist at the time of executing the release, if those claims would have materially affected the settlement.

entering into these releases was untrue, or that any fact was concealed from them, or that any understanding of the facts or of the law was incorrect, Borrower and Guarantor, and each of them, shall not be entitled to set aside these releases by reason thereof, regardless of any claims of fraud, misrepresentation, promise made without the intention of performing it, concealment of fact, mistake of fact or law, or any other circumstances whatsoever."

The actual deed in lieu attached an estoppel affidavit, signed by Baghdassarians for himself and on behalf of MDR, stating, among other things, "[t]hat, in the execution and delivery of the Deed, [MDR] was not acting under any misapprehension with regard to the effect of the Deed, acted freely and voluntarily, and was not acting under coercion or duress; [and t]hat the consideration for the Deed was, and is, full cancellation of all of Grantor's debts, obligations, costs, and charges secured by two (2) Construction Deeds of Trust . . . ."

Bank would present some evidence that the deed in lieu was part of a global settlement agreement, which resolved not only the MDR project, but the Angeleno deed of trust, and several other projects in which Baghdassarians was also in default. Although we conclude the evidence of a global settlement agreement is disputed—due to its apparent shifting terms and continuous renegotiation—it is certainly clear that all parties believed that reciprocal obligations were being exchanged across transactions. This is illustrated by an e-mail from Baghdassarians to the Bank, just prior to his execution of the deed in lieu agreement, in which he states, "[p]er our conversation I will go and sign MDR at 1:00 today. Trusting that [you] will take care of the items we discussed for [two other

projects]. I have trusted you so far and will trust you to take care of your promise as I am keeping my promise to sign off MDR as I have done [with two additional projects]." Ultimately, the status of the other projects does not bear on our analysis.

4. *The Pleadings in This Action*

This action began with a complaint by a real estate agent against MDR and Bank, alleging it was owed a commission for the sale of the project to Anastasi. MDR, Baghdassarians and Angeleno then brought a cross-complaint against Bank and Anastasi. The initial complaint of the real estate agent was dismissed; and, after demurrers and amendments to the cross-complaint, the only remaining parties on the cross-complaint were MDR and Bank.[6]

The operative pleading is the second amended cross-complaint, in which MDR alleges 12 causes of action against Bank, including breach of contract, fraud, breach of fiduciary duty, and equitable rescission of the deed in lieu. The gist of the cross-complaint is that the transaction did not involve a construction loan, but, rather, a joint venture agreement, which Bank drafted as a construction loan to disguise its terms from regulators. The Bank then unilaterally stopped funding the project, forcing MDR to surrender the property without compensation. The cross-complaint acknowledges contrary language of the release in the deed in lieu, but alleges that it is "void or voidable and otherwise ineffective as it was the product of fraud, economic duress, oppression, undue influence, misrepresentation, breach of trust, constructive fraud and/or

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[6] Anastasi is not a party to this appeal.

mistake; and its enforcement would be unconscionable under the circumstances."[7]

Bank's answer consisted of a general denial and affirmative defenses. One of those affirmative defenses was that MDR executed the release and estoppel affidavit.

5. *Motion for Summary Judgment*

Bank moved for summary judgment on the basis that the release in the deed in lieu agreement barred all of MDR's causes of action.[8] Bank's evidence in support of the motion included all of the documents reflecting the transaction, excerpts from depositions, declarations of Bank employees, and letters and e-mails between the parties.

6. *MDR's Opposition*

MDR opposed the motion for summary judgment on the basis that triable issues of fact existed as to whether the release

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[7] MDR's unconscionability argument was based on allegations that Baghdassarians, "without counsel, was kept waiting for hours, then brought into a room and told to 'sign the documents or suffer the consequences' . . . ." At deposition, Baghdassarians testified that, in contrast to these allegations, he had received the documents for review the day before he signed them. He does not pursue unconscionability on appeal, and we therefore do not address it further.

[8] In the alternative, Bank moved for summary adjudication of several issues. Particularly, Bank sought summary adjudication of MDR's cause of action to rescind the deed in lieu, on the basis that the condominium complex had since been completed and the units sold to individual buyers, whose rights to the units have intervened. In addition to granting summary judgment on the entire cross-complaint, the trial court granted summary adjudication on this cause of action. MDR does not challenge this ruling on appeal.

was the product of fraud or duress, or subject to equitable estoppel.

MDR's fraud argument was not that the release itself was fraudulent, but, rather, that the *documents in the underlying transaction which led to the release* were fraudulent. MDR argued that the Bank had fraudulently represented it would continue funding the joint venture in order to obtain the loans and the guaranty.

MDR's duress argument was that the release was obtained as the product of economic duress, in that Bank had threatened to foreclose its trust deed on Baghdassarians's home (which was security for the Angeleno line of credit), and the threat of foreclosure was wrongful in that Bank had obtained the line of credit by representing that no payments would be due on it until the project was completed.

MDR's equitable estoppel argument was that Bank should be estopped from profiting from its fraud. "The fraud culminated when the Bank discontinue[ed] funding (although there had been no default) and coerced [Baghdassarians] to release MDR's interest in the [project] by threatening to foreclose upon the very Deed of Trust it had assured him would result in a guaranty [of] continued funding and additional profits in their partnership."

The opposition was supported by several documents, but the vast bulk of the opposition evidence consisted of a declaration by Baghdassarians, setting forth his understanding of, among other things: (1) the partnership he believed he had with Bank; and (2) Bank's promises that if he signed the Angeleno line of credit and trust deed on his house, no payment would be required until the project was complete and the units sold. As to the release itself, Baghdassarians declared that he had no alternative

but to do whatever Bank demanded in order to keep his house, even though Bank had broken its deal with him.

7. *Reply and Objections*

In reply, Bank submitted evidentiary objections to much of MDR's evidence—including dozens of objections to Baghdassarians's declaration.

On the merits, it argued that Baghdassarians's fraud argument was directed not to the release but to the underlying transaction—a claim of fraud which was itself subject to the release. Bank argued Baghdassarians's duress argument failed because duress requires a wrongful act, and any threat to foreclose on Baghdassarians's home was not wrongful because the line of credit had matured on January 5, 2012, and was unpaid, justifying foreclosure even if the bank took no steps to effect foreclosure. As to equitable estoppel, Bank argued that it was simply a restatement of MDR's other arguments.

8. *Hearing*

The court issued a tentative ruling in favor of Bank. Not only did the court intend to grant summary judgment, it also intended to sustain a great many of Bank's objections to Baghdassarians's declaration. In particular, the court intended to sustain objections to: (1) Baghdassarians's characterization of the relationship as a partnership; and (2) Baghdassarians's repeated claim that he was assured that, if he signed the Angeleno line of credit and the deed of trust on his home, no payment would be required until the project was complete and the units sold.

At the hearing, MDR argued against the tentative ruling on the merits, but did not address the proposed rulings on Bank's objections. MDR emphasized that it was arguing the release was

signed under duress, because Baghdassarians had been told to sign the documents or the Bank would foreclose on his home. This was wrongful, according to MDR, because Bank had promised not to do so.

9. *Ruling, Judgment and Appeal*

The court took the matter under submission and later adopted its tentative ruling in its entirety. Judgment was entered for Bank. MDR filed a timely notice of appeal.

10. *Briefing on Appeal*

On appeal, MDR argued in its opening brief that it had raised a triable issue of fact as to fraud, economic duress and equitable estoppel, any one of which would render the release unenforceable. However, MDR relied on a great deal of evidence to which objections had been sustained, and made no argument that the trial court erred in its evidentiary rulings.[9]

In its respondent's brief, the Bank correctly pointed out that MDR improperly relied upon material which was subject to sustained objections.

In reply, MDR suggested that evidentiary rulings may be subject to de novo review, to the extent they do not implicate the trial court's discretion. However, MDR did not—in either of its appellate briefs—identify any objection which it contended was erroneously sustained.

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[9] The only evidentiary argument MDR made is that, as a general principle, the parol evidence rule does not prevent it from introducing evidence that a written agreement is fraudulent. (See *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* (2013) 55 Cal.4th 1169, 1172.) But the trial court had expressly agreed with MDR on this point, and MDR identifies no specific evidence which the court erroneously excluded under the parol evidence rule.

DISCUSSION

1. *Standard of Review*

"The policy underlying motions for summary judgment and summary adjudication of issues is to ' "promote and protect the administration of justice, and to expedite litigation by the elimination of needless trials." ' " (*Hood v. Superior Court* (1995) 33 Cal.App.4th 319, 323.)

" 'A defendant is entitled to summary judgment if the record establishes as a matter of law that none of the plaintiff's asserted causes of action can prevail.' [Citation.] The pleadings define the issues to be considered on a motion for summary judgment. [Citation.] As to each claim as framed by the complaint, the defendant must present facts to negate an essential element or to establish a defense. Only then will the burden shift to the plaintiff to demonstrate the existence of a triable, material issue of fact. [Citation.]" (*Ferrari v. Grand Canyon Dories* (1995) 32 Cal.App.4th 248, 252.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) We review orders granting or denying a summary judgment motion de novo. (*FSR Brokerage, Inc. v. Superior Court* (1995) 35 Cal.App.4th 69, 72; *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 579.) We consider all of the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained. (*Valdez v. Seidner-Miller, Inc.* (2019) 33 Cal.App.5th 600, 607-608.)

2. *Bank Met Its Burden as Moving Party*

Bank's motion for summary judgment relied on the language of the broad release contained in the deed in lieu agreement. The release appears to encompass every cause of action raised in MDR's cross-complaint, which is directed to Bank's conduct in the underlying transaction, and MDR does not contend otherwise.[10] It is therefore apparent that, if the release is not invalid due to fraud, duress, or equitable estoppel, Bank was properly granted summary judgment.

3. *MDR Has Raised No Triable Issue of Fact Supported by Admissible Evidence*

We turn to whether MDR has raised a triable issue of fact. In doing so, we exclude from consideration the evidence to which objections were sustained, as none of those rulings are challenged on appeal.

A. *No Triable Issue of Fact as to Fiduciary Duty*

Preliminarily, MDR takes the position that Bank, as its partner or joint venturer, owed it a fiduciary duty, and that this fiduciary duty informs all of its other arguments regarding the alleged unenforceability of the release. (See, e.g., *Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 524-526 [affirming, against a substantial evidence challenge, a judgment after jury trial in which the jury found a breach of fiduciary duty where the parties had a written joint venture agreement to acquire and develop property, and one partner unilaterally terminated the agreement].)

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[10] Arguably, the only claim not encompassed by the release is the cause of action to rescind the deed in lieu agreement itself. But Bank obtained summary adjudication on that cause of action due to the intervening rights of purchasers, and MDR does not challenge that ruling.

In seeking summary judgment, Bank represented that the only basis on which Baghdassarians claimed a joint venture was the profit sharing arrangement, which, by statute, is insufficient to establish a joint venture, under section 1917.001.[11] In opposition, Baghdassarians relied on paragraph 51 of his declaration, which asserted Bank "played a very different and more active role" in the project, and set forth 11 factors which Baghdassarians claimed established a partnership or joint venture relationship. Bank objected to this paragraph in its entirety. The objection was sustained and is not challenged on appeal. In short, the only fact properly before us to support MDR's argument that there was a joint venture is that the loan was a shared appreciation loan, which, by statute, does not render the parties joint venturers or partners.[12] There is therefore no triable issue of fact of a fiduciary relationship.

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[11] In addition, the construction loan agreement states, "The relationship between Borrower and Lender is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Lender and Borrower or to create an equity in the Project in Lender."

[12] MDR does not address section 1917.001 at all in its briefs, arguing instead that Bank "does not deny that material facts exist that demonstrate a fiduciary relationship, but rather contends that MDR does not adequately explain how the relationship is critical to its claims." To be sure, Bank did argue that MDR's opening brief did not "explain[] why the existence of such a relationship is 'critical' here." But it did not concede a joint venture relationship.

B. *No Triable Issue of Fact as to Fraud*

The elements of fraud consist of " ' "(1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage." [Citations.]' " (*Hoffman v. 162 North Wolfe LLC* (2014) 228 Cal.App.4th 1178, 1185-1186.)

MDR's fraud argument is that Bank made fraudulent misrepresentations in the course of the underlying transaction, specifically promising that no payment would be due until construction was complete. But this argument only goes to whether the underlying loan documents and deed of trust were induced by fraud; a claim which was expressly extinguished by the release.[13] Unless MDR can raise a triable issue of fact that the release itself is unenforceable, the underlying fraud claim is necessarily released and no court will ever reach its merits.[14]

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[13] The release expressly released Bank "from any and all lawsuits, . . . actions and causes of action, of whatever kind or nature, whether known or unknown, suspected or unsuspected, . . . that concern, relate or pertain to, in any way whatsoever, the Loans, the Loan Documents (including, without limitation, the Guaranty), and/or the Property."

[14] In its reply brief on appeal, MDR suggests that the deed in lieu itself was induced by fraud, in that MDR "would not have relinquished its rights in the project if the Bank had candidly disclosed its true reasons for discontinuing funding (severe regulatory pressure), rather than rely on the purported loan documents to misrepresent the consequences if MDR did not surrender the Project." Setting to one side that MDR's assertion that Bank discontinued funding due to "severe regulatory pressure" is purely speculative, we fail to see where any

MDR's fraud argument may more appropriately be viewed as one of failure of consideration. MDR argues that because the underlying agreements were induced by fraud, the release was given in exchange for Bank's (and Anastasi's) release of unenforceable loan obligations, and was therefore not supported by valid consideration (and MDR uses that term occasionally in its briefs). But this argument is based on evidence to which objections were sustained. The loan documents themselves provided that they would be due on certain dates; those dates were extended and construction was not yet complete. Although Baghdassarians declared that the completion dates in the documents meant nothing because MDR and Bank were partners in a joint venture to complete the project, and Bank agreed not to collect until the job was complete, objections were sustained to these statements. In its opposition to Bank's separate statement, MDR asserted, "Bank never noticed any default on the [project.] [¶] There was no default and the Bank pressured [Baghdassarians] because of FDIC concerns." The opposition cited to Baghdassarians's declaration, paragraphs 42-46 for this proposition. But Bank interposed multiple objections to these paragraphs, no fewer than five of which were sustained. After eliminating the evidence to which objections were sustained, no evidence remains in those paragraphs supporting the proposition that MDR had not breached and no payment was due.[15] In short,

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misrepresentation (or concealment) of Bank's *reasons* for discontinuing funding is material.

[15] Similarly, in its own separate statement, MDR asserted that it "had fulfilled its obligations under its agreement with the bank," citing to the same evidence, an additional paragraph of Baghdassarians's declaration which does not speak to

there is no evidence properly before this court that the loan agreements were not due in accordance with their terms. And there is no evidence to establish a dispute of material fact over whether the deed in lieu was inadequately supported by consideration.

C. *No Triable Issue of Fact as to Duress*

A claim of economic duress often arises when a party is attempting to avoid a contract modification or a settlement and release. (*Rich & Whillock, Inc. v. Ashton Development, Inc.* (1984) 157 Cal.App.3d 1154, 1158.) The party asserting duress need not establish the other party committed an unlawful act amounting to a tort or a crime, but must establish "a wrongful act which is sufficiently coercive to cause a reasonably prudent person faced with no reasonable alternative to succumb to the perpetrator's pressure. [Citations.]" (*Id*. at pp. 1158-1159.) "The assertion of a claim known to be false or a bad faith threat to breach a contract or to withhold a payment may constitute a wrongful act for purposes of the economic duress doctrine. [Citations.] Further, a reasonably prudent person subject to such an act may have no reasonable alternative but to succumb when the only other alternative is bankruptcy or financial ruin. [Citations.]" (*Id*. at p. 1159.) However, merely attempting to foreclose on a mortgage is not duress; it is only duress to threaten legal action when the party doing so knows "the claim asserted was false." (*Leeper v. Beltrami* (1959) 53 Cal.2d 195, 204.)

Here, MDR claims duress in that the deed in lieu agreement was obtained by duress in that Bank was threatening

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performance, and a paragraph of Havai's declaration in which he testified that MDR had performed—but Bank's objection to this paragraph was also sustained.

to collect on the overdue loans, the guaranty, and the deed of trust on his home if he did not execute the documents. But none of Bank's threats constitute wrongful acts; it was entitled to enforce all of the obligations under these documents, as they had come due. MDR's duress argument is based on its assertions that Baghdassarians was promised the deadlines were meaningless and Bank would continue funding until construction was completed; but, again, his declaration on this point was subject to numerous sustained objections.

D. *No Triable Issue of Equitable Estoppel*

Finally, in a contention similar to its prior arguments, MDR suggests it raised a triable issue on the theory that Bank is equitably estopped to rely on the release.

There are four elements of equitable estopped: (1) the party to be estopped must be apprised of the facts; (2) that party must intend that its conduct shall be acted upon, or must so act that the party asserting estoppel had a right to believe it was so intended; (3) the party asserting estoppel must be ignorant of the true state of facts; and (4) the party asserting estoppel must rely upon the conduct to its injury. (*D'Egidio v. City of Santa Clarita* (2016) 4 Cal.App.5th 515, 532.)

MDR concedes that these are the elements, and argues that they are satisfied by: (1) Bank's knowledge that all required payments were made; (2) Bank's intent that its threats of foreclosure prompt MDR to relinquish its rights; (3) MDR's ignorance as to Bank's legal right to foreclose or collect on the debt; and (4) MDR's reliance on the threats and misrepresentations to sign the deed in lieu agreement. MDR's attempt to fit its argument into the framework of equitable estoppel is creative, but unavailing. Moreover, it is contrary to

MDR's own evidence. The estoppel argument depends on the premise that MDR was unaware that Bank had no legal right to foreclosure. But, by the time of the deed in lieu, Baghdassarians already knew that Bank had breached what he believed to be its promises of continued funding. Indeed, in the course of supporting MDR's duress argument, Baghdassarians's declaration stated, "[b]y March 2012, I felt I had no alternative but to do whatever the bank asked to protect my house, even though I knew the bank had broken its deal with me and was now using the Deed of Trust I signed at their request, to get them out of trouble with the FDIC as the weapon of my financial destruction." He further stated, "[i]nitiating suit against the bank was not an option because lawyers would cost a minimum of tens of thousands to fight the bank and I was going broke (and the bank knew it) and needed to save my family home." This is not an assertion of ignorant reliance on the Bank's representations of its right to foreclose; it is an assertion of knowing submission to them, despite a subjective (not objective) belief that they were incorrect.

MDR has therefore failed to raise a triable issue of fact as to equitable estoppel.

DISPOSITION

The judgment in favor of Bank is affirmed. MDR is to pay Bank's costs on appeal.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

KIM, J.